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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,942	08/25/2000	Stephen B. Crain	CJM 9637	6282

321 7590 09/26/2002

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

COURSON, TANIA C

ART UNIT PAPER NUMBER

2859

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/648,942

Applicant(s)

CRAIN ET AL.

Examiner

Tania C. Courson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-30 and 37 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 11, 14, 16, 31, 32 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 5, 7-10, 12, 13, 15 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Suverkrop (U.S. Patent No. 2,594,823) and Allen.

Hall discloses a device for holding surveyor's equipment comprising:

- a) one pole section (66), a point comprising a body (84), and a tip (86).

Hall does not disclose a tip formed for releasable interconnection with the body at a connection on the body, and a spare tip formed for releasable interconnection with the body at the connection location on the body to replace the tip, the body having a cavity therein sized and shaped to hold the spare tip when not in use, and a shoe covering the point and a shoe being constructed for releasable connection.

With respect to a tip formed for releasable interconnection with the body at a connection on the body, and a spare tip formed for releasable interconnection with the body at the connection location on the body to replace the tip, the body having a cavity therein sized and shaped to hold the spare tip when not in use, Suverkrop teaches a plum bob that consists of a tip

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formed for releasable interconnection with the body at a connection on the body (Fig. 2, tip 2), and a spare tip formed for releasable interconnection with the body at the connection location on the body to replace the tip (Fig. 2, replacement point 6), the body having a cavity (Fig. 2, cavity 5) therein sized and shaped to hold the spare tip when not in use (Fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device for holding surveyor's equipment of Hall, so as to include a tip and spare tip formed for releasable interconnection with the body and the body having a cavity, as taught by Suverkrop, so as to provide a means for increased reliability of the tip should the tip be accidentally lost or damaged during use of the device.

With respect to a shoe covering the point and a shoe being constructed for releasable connection, Allen teaches an apparatus that consists of a shoe (12, 32) covering the point (Fig. 5) and a shoe (12,32) being constructed for releasable connection (28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device for holding surveyor's equipment of Hall, so as to include a shoe covering the point and a shoe being constructed for releasable connection, as taught by Allen, so as to provide an alternative means during use on different terrains.

Allowable Subject Matter

3. Claims 17-30 and 37 are allowed.

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4. Claims 5, 7-10, 12-13, 15 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed July 17, 2002 have been fully considered but they are not persuasive. Therefore, claims 1-4, 6, 11, 14 and 16 and newly added claims 34-36 are rejected under the same ground of rejection as set forth in the Office Action mailed on February 13, 2002.

Applicant has argued that Allen does not teach a shoe having a blunt bottom wall engageable with the ground where the shoe covers the point and whereby the surveying pole is capable of selective configuration for use in terrain having different surface properties, as stated in claims 1 and 35. In fact those features in the claims are shown in figure 5 of Allen such as a shoe (casing 12 and lower cover portion 32) having a blunt bottom wall (Fig. 5, lower cover portion 32) engageable with the ground (Fig. 5) where the shoe covers the point (Fig. 5) and whereby the surveying pole is capable of selective configuration for use in terrain having different surface properties (Fig. 5). Allen is only used to show that it is already known in the art to cover a point with a shoe having a blunt bottom wall and that the shoe allows for use over different surface properties.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding claims 1 and 16, amended claim 16 now includes the same requirements as found in amended claim 31, thus the same rejection that was utilized for claims 31 and 32, as stated above in paragraph 2, is utilized to reject claims 1 and 16.

6. Applicant's arguments with respect to claims 31-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (703) 305-3031. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this Organization where this application or proceeding is assigned is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
September 24, 2002